First Principles.

NATIONAL SECURITY AND CIVIL LIBERTIES

MAY 1977 VOL. 2, NO. 9

A Law to Control the Intelligence Agencies: H.R. 6051

The Legislation Supported by the American Civil Liberties Union

BY CHRISTINE M. MARWICK

AFTER INVESTIGATION, LEGISLATION

The recent official investigations have given us a well-documented, if still incomplete, record of programs which the intelligence agencies carried out in the name of national security but which were a frontal assault on the principles of open and responsible government, both at home and abroad.

The list of covert operations unearthed in these investigations is too varied and too threatening to be easily swept under the carpet. Our law enforcement agencies have diverted their resources from legitimate criminal investigations and into the cloak and dagger games of political intelligence; they have attacked the civil rights, peace, and other movements. Files have been amassed to blackmail members of Congress and other influential Americans. The CIA has overthrown democratic governments and installed brutal dictatorships, while the intelligence agencies of foreign powers are allowed to operate within the United States. And the intelligence bureaucracy has established a record of being unable to predict or prevent violence and of producing unreliable intelligence anaylsis.

With such a record, the agencies' defenders and their critics acknowledge that reforms must be made. For their defenders, the agenda is "restoring confidence" in the agencies; for their critics, the goal is restoring constitutional values. As a result, a great many legislative proposals will be contending on Capitol Hill in the coming year. For its part, the American Civil Liberties Union strongly supports the Federal Intelligence Agencies Control Act of 1977, introduced as H.R. 6051 by Rep. Herman Badillo (D.-N.Y.) and seventeen co-sponsors on April 5, 1977. This is only the first of the legislative packages which are expected to be put forth in the coming months. Rep. Ron Dellums (D.-Ca.) has also introduced a bill which is identical in most of its provisions to H.R. 6051. Other members of Congress are also submitting their bills, both the White House and the Senate Intelligence Committee have bills in the drafting stages, and when the House Intelligence Committee (which is expected to be set

It is at all times necessary, and more particularly so during the progress of a revolution and until right ideas confirm themselves by habit, that we frequently refresh our patriotism by reference to first principles.
THOMAS PAINE

up soon) gets underway, there could be still another set of proposals.

Each blueprint for reform will start with different assumptions about the nature of the problems and the risks that are involved. The administration's bill, for example, will almost certainly try to end leaking, while H.R. 6051 encourages blowing the whistle on improper operations.

As with all legislation, the different proposals must be looked at not only for what they ostensibly set out to accomplish, but for their hidden content — the loopholes. A legislative program constructed of well-intentioned half-measures and compromised by loopholes would set up a "reformed" intelligence community that could readily breed the same abuses of clandestine power once the current furor dies down.

A MAJOR OVERHAUL NEEDED

We may never be able to accurately assess the full extent of the damage that the various intelligence agencies have done, but the gravity of the unanswered questions is certain. To what extent, for instance, have these operations actually created violence? Does a government which uses terror to its own ends start an epidemic of terrorism? What would domestic politics now look like but for the attacks on civil rights leaders?

H.R. 6051 The Federal Intelligence Agencies Control Act of 1977

Title I — ends domestic political investigations; allows only the investigation of crimes.

Title II — limits and regulates the kinds of investigative techniques that are allowable.

Title III — reforms the CIA, renaming it the Foreign Information Service, outlawing covert operations, and limiting it to analyzing intelligence from technical and open sources.

Title IV — revises the secrecy system by limiting the kind of information that can be classified and by denying classification to any evidence of official crime.

Title V — outlaws official deceit and plausible denial.

Title VI — protects government employees who blow the whistle on illegal agency activities.

Title VII — sets up a temporary special prosecutor with jurisdiction over the crimes of the intelligence agencies.

Other Provisions of the Act:

- criminal penalties against officials who violate the Act.
- gives victims a statutory basis to sue for damages.
- requires greater oversight of the intelligence agencies — public budgets, audits, review, warrant requirements, paper trails.

And would the Vietnam War have ended years earlier if the intelligence agencies had not fought the anti-war movement?

Even without final answers to such questions, we know now that the intelligence agencies have been involved in these problems to an ominous degree. It is clear that the system that engendered these programs is threatening enough to warrant a major overhaul. Merely exhorting individuals who staff such a system that they should not abuse the broad powers that go along with a clandestine apparatus will change nothing.

The ACLU-backed Intelligence Agency Control Act would be such an overhaul of the intelligence system. As the outline of its provisions on this page shows, it would dramatically change the FBI, CIA, and the secrecy system; control investigations; end the "plausible denial"; encourage whistleblowing; put criminal penalties on officials who violate the law; and back up the even-handed application of the law with a special prosecutor.

The changes would reverse the Cold War assumptions that fueled the intelligence bureaucracy's program against open and democratic political activity in the first place. In its statement of purpose, the bill reads

> national security and the enforcement of law are essential to any society; but the need to achieve these goals cannot justify departure from constitutional restraints or democratic principles.

This is the basic turnaround — H.R. 6051 would enact a reassertion of constitutional principles, a government of checks and balances and guaranteed rights where there has been a vacuum before.

It has not been understood until recently that the intelligence bureaucracy was put together on an almost ad hoc basis, largely by executive fiat. The secrecy system is a similar creature, without legislated limits. Until now there has been no serious effort to determine how this apparatus, which amounts to a clandestine branch of government, fits into a constitutional framework. Instead, it was assumed that constitutional items such as checks and balances, public accounting of expenditures, the Bill of Rights, and the foreign policy responsibilities of Congress could be set aside on behalf of the "national security." In this one area, it was simply assumed that American officials (unlike any others in history) could be trusted not to abuse secret powers.

Yet we find that in exchange for a system which expected us to give up constitutional principles we have gotten a dismal record that underscores what the constitutional values are supposed to prevent.

The Act makes major changes in the ways that these things have been handled for decades. These changes go in one direction — in the support of constitutional values.

CONTROLLING DOMESTIC INVESTIGATIONS

Title I of H.R. 6051 prohibits domestic political intelligence outright by all Federal agencies — CIA, FBI, IRS, NSA, Military Intelligence. In a series of provisions aimed particularly at the FBI, the legislation ensures that the Bureau would be authorized to conduct *only* criminal investigations.

The executive branch has maintained in the past that since political intelligence investigations were not criminal investigations, and since the dossiers were (theoretically) not supposed to be used in criminal prosecutions, it was not unconstitutional to collect millions of files on the legal political activities of Americans. The upshot of this logic was that a suspected criminal had protection under the Fourth Amendment, but that the politically active citizen did not.

But this did not end with "simple" political surveillance. It flowered into something euphemistically labelled "preventive action," which could, at the discretion of the bureaucrats, be used against people exercising First Amendment political rights. The FBI's COINTELPRO used agents provocateur, forgery, character assassination, anonymous threats, pressure on employers, and other tactics in order to "prevent" any possibility of some criminal conspiracy developing at some unspecified future time; organizations were infiltrated and destroyed because they might one day acquire "subversive" members.

Limiting law enforcement agencies to enforcing the criminal laws would be a major change over the current authority. While former-Attorney General Levi did technically abolish the FBI's Internal Security Branch, what actually happened was that its political intelligence functions were transferred to the Bureau's General Investigations Division. H.R. 6051 would clear up any alleged ambiguity about the limitations of the Bureau's proper mission by renaming it the Federal Bureau of Criminal Investigation (FBCI). Both political surveillance and preventive action are specifically banned.

Since espionage, sabotage, terrorism, and treason are crimes, the FBCI would be able to put its resources into investigating such bona fide law breaking. It could turn its resources to the agents of foreign powers that operate within the United States — the Chilean DINA and the Korean CIA come to mind as readily as the Soviet Union's KGB.

Another critical change which the Intelligence Control Act provides for is the repeal of the "speech crimes" — 18 U.S.C.§2101 (the Riot Act), § 2385 (the Smith Act against advocating violent overthrow of the government), § 2386 (the Voorhis Anti-Propaganda Act), and §§ 2387 and 2391 (the Military Sedition Acts). The Supreme Court long ago gave these statutes such a narrow interpretation that the conviction under them could be won only if the speech crime accompanied other crimes which are punishable under other, more concrete statutes. And although the FBI and Justice Department have understood that they could not win convictions under these laws, they have been able to use them as a pretext for investigating political activities where there was no suspicion of any actual criminal activity. Most recently, under the Guidelines which then-Attorney General Levi issued to correct FBI abuses, the speech crimes can still be used as a pretext for a "criminal" investigation of legitimate political activity. Unless these laws are repealed, the Bureau would still have its loophole for investigating political speech.

Title I of H.R. 6051 also outlaws the selective investigation and selective prosecution of crimes, *i.e.*, threatening people who are exercising their First Amendment rights with special vigilence for wrongdoing. The IRS's tax audits of Nixon's political adversaries are of course the classic example of this.

The FBI's authority to conduct security clearance investigations would, under the Intelligence Control Act, be transferred to the Civil Service Commission. This non-criminal investigative function has in effect given the FBI the chance to see that the choice of public servants reflects the Bureau's values. H.R. 6051 also requires that Civil Service protect the privacy of these files and that these investigations may be carried out only with the authorization of the prospective employee. This would close one of the intelligence bureaucracy's current loopholes; they can presently investigate anyone by claiming that they are considering whether to offer him or her a job — whether or not that subject has any plausible interest in such a job.

These are changes in the FBI's mission; there are also necessary changes in the Bureau's structure.

First and foremost, under H.R. 6051 the term in office of the Director is limited to six years. It must never be possible to repeat J.Edgar Hoover's running the Bureau with an iron whim for nearly half a century. And as an additional counterbalance to the possible peculiarities of its future Directors, the Act would upgrade oversight responsibilities of both the Attorney General and the newly established Inspector General for the Bureau. The AG would have to authorize in writing (and therefore be accountable for) any criminal investigation which might also involve First Amendment rights. Along with the Inspector General, the Special Prosecutor, congressional oversight committees, and the General Accounting Office (GAO), the AG would be able to review FBCI working files; never again would it be possible for a Director to consolidate his or her hold on office by squirreling away decades worth of personal information on influential Americans, or to conceal a program the size of COINTELPRO from a succession of Attorneys General.

The Intelligence Agency Control Act also controls what may be put into investigatory files and makes sure that privacy interests are taken care of: no irrelevant, false, defamatory, or First Amendment-protected information may be included. Investigatory files which have been closed will be available only (1) to the Inspector General and oversight committees; (2) if the files are sought with a valid subpoena or search warrant; or (3) if the subject of the investigation requests access to his or her file. Since the Act requires that, six months after an investigative file is closed and sealed, subjects must be notified in writing of the existence of their files and of their right to see them, this makes certain that citizens will be able to oversee their own rights and hold the government accountable for the information that is collected on them. All closed files must be destroyed within ten years.

Money — the power of the purse — is another means of oversight and control of any government agency. The Act would require a detailed FBI budget be published and that yearly audits by the AG's office and by the General Accounting Office be conducted. This means that there will be established structures for judging the FBI's actual effectiveness in carrying out its authorized mission.

And finally, in this and other Titles of the Act, there are clear criminal and civil penalties which will be brought into play if the new intelligence and official deceit laws are broken. Not only would officials be liable in criminal court to prison sentences and stiff fines, but the Act spells out explicit authority for the

victims to sue in civil court for damages against the officials and the government itself.

CONTROLLING INVESTIGATIVE PROCEDURES

Title II of the Intelligence Agency Control Act would put stringent controls on the investigative techniques which the government can use against people who are not the agents of a foreign power. Basically, H.R. 6051 provides that there are no exceptions to the Fourth Amendment, which requires that "searches and seizures" can be conducted only if they are "reasonable" and a judicial warrant has been obtained by convincing an impartial judge that there is probable cause to believe that a crime has been or is about to be committed. Under H.R. 6051 certain investigative techniques are prohibited because they are inherently unreasonable. Other techniques which are allowed only with warrants, and while warrants have never been a panacea, they at least ensure that citizens are entitled to a paper trial.

Electronic surveillance. The bill would outlaw electronic surveillance such as wiretaps and bugs, and it makes clear that, contrary to the claims of recent administrations, there is no "inherent presidential authority" to use them. At the same time, the Act would lay to rest the National Security Agency's claim that it has authority to use its computers to eavesdrop on literally all the international electronic communications of Americans.

There are constitutional and practical reasons for ending electronic surveillance. The Fourth Amendment forbids "unreasonable" searches, and searches by electronic instruments are inherently unreasonable because they are indiscriminate. They pick up information on everyone who is overheard, whether or not they are subjects of the investigation. And even when picking up the conversations of the actual subject of the investigation, microphones again must pick up everything that is heard, and not merely wait for possible evidence of a crime. Electronic surveillance can not pass the test of reasonableness; it is analogous to taking a warrant into a house to look for specific evidence of a crime but moving everything in it down to the police station.

And although the government makes many assertions about the usefulness of such surveillance, it has not been able to demonstrate that enough relevant criminal information — rather than titillating data on people's personal and political lives — is picked up that the technique would survive a cost-benefit analysis. In addition, much information is available through other means.

Informers. Under section 202 of H.R. 6051, informers ("Misrepresentation of Membership in Political Groups") are prohibited. This is a dramatic turnaround from the current legal situation, which provides only a flimsy pretense of control on the use of paid informers or undercover agents in either criminal or non-criminal investigations. The Intelligence Control Act would, for the first time, provide protection to First Amendment groups. As long as the government is free to infiltrate legitimate political organizations, they can exercise control over the decisions that are made, even without compiling dossiers. For as an investigative technique, the informer is far more intrusive than a bug or wiretap. An informer can vote, win people's confidence, entice or provoke criminal activity, sow dissension, and fabricate information.

Tax, Bank, Credit, and Phone Records, and Mail Covers. In today's complex society, there are innumerable kinds of records which did not exist when the Bill of Rights was drafted, and current law has not really taken this situation into account. The Act makes it clear that searching and seizing tax, bank, credit, and phone records, or installing mail covers, must be handled with the same restrictions as searching someone's home. The Intelligence Agency Control Act makes it clear that the government's authority to investigate people is controlled by the Fourth Amendment.

The bill also provides that in situations where the same records could be obtained by a subpoena — which would give the subject the chance to contest the government's justifications — the government would be required to ask for a subpoena instead of a warrant.

CONTROLLING FOREIGN INTELLIGENCE ACTIVITIES

The most dramatic change which the Intelligence Control Act puts forward is in Title III, which (1) amends the National Security Act of 1947 (50 U.S.C. §403), (2) renames the CIA the Foreign Information Service (FIS), and (3) entirely eliminates the covert action mission of U.S. foreign intelligence. This would mean that, except in a declared war, there would be no more covert activities abroad — whether overthrowing governments, conducting paramilitary adventures, bribing or blackmailing foreign officials, or espionage. Its new mission would be limited to collecting data from open sources and from technical means such as spy satellites, and, most importantly, analyzing it.

In the wake of recent revelations, the time has come to subject the covert operations mythology to some reevaluation. Too much has been claimed without proof for the usefulness of such operations, and too little has been acknowledged about their hidden costs. Looked at afresh, it becomes clear that they are not only obsolete in today's world, but counterproductive.

The U.S. got along without a spy apparatus until the CIA was created to respond to Cold War threats, yet the Agency has been unsuccessful at operating in closed and powerful societies such as the Soviet Union and China. And the public record now shows such curious lapses in its ability to analyse its data as when it misplaced the Red Army for two weeks while the invasion of Czechoslovakia was underway. It is true that we need reliable intelligence on the USSR and China, but it is equally true that reliable information is obtained by techniques such as satellite photography and using open sources, rather than obsolete (and/or non-existent) cloak and dagger operations.

The CIA's "successes" have instead all been in countries which are not a threat to the U.S., but which have been trying to be politically autonomous. These have ended up damaging the U.S.'s standing internationally — the established record of overthrowing democratic governments and replacing them with brutal dictatorships has not been lost on the responsible citizens of other countries. It has been claimed that such covert actions

come cheap because they allowed the U.S. to issue a "plausible denial" of involvement. But the actual result has been that we have a foreign policy that is based on papering transparent lies over the actions of what has too often been a ruthless giant. For a long time, Americans have not been able to understand the anti-Americanism which blamed all ills (even perhaps some which were none of our doing) on the U.S. Now that we know something of the record that the CIA has established for us overseas, we must now try to ensure that it is a thing of the past.

Covert action — staging coups and burning sugar refineries — is now widely admitted, even by administration figures, to be counterproductive, but what about espionage? The answer is that there is no way to draw a line between "simple" espionage and plotting a coup.

For a start, spies are notoriously unreliable. Double agents, with their own reasons for telling stories, abound. But even if your agent has not been compromised by one or more other powers, there is still the question of how much to trust his or her judgment. Satellite photography, by contrast, offers the analysts an objective record to study.

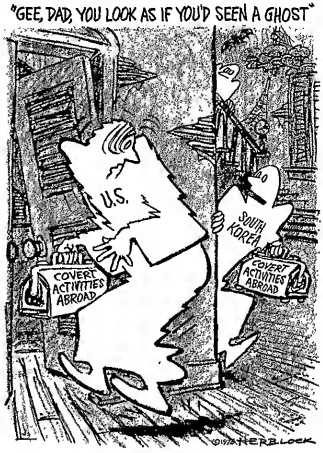
Secondly, given that the Agency takes in too many reports to analyze, a rational spy system would limit itself to only those reports which are most useful — and these are from people who are in the power circles of their own countries. To buy these "assets," the CIA uses bribery, blackmail, and extortion; "simple" espionage is therefore a technique which controls and corrupts the foreign government in a way little different from orchestrating a coup.

Thirdly, the legislative record established when Congress set up the CIA in the late '40s shows that they believed that they were setting up an organization only for collecting (including by espionage) and analyzing data. Authorization to conduct espionage soon cut its own loopholes and it was but a short step to focusing the Agency's resources into controlling and/or choosing foreign governments.

There have also been hidden domestic costs, which have not been fully owned up to, for these activities.

The CIA's clandestine warfare has warped the constitutional process in our own government. If the Constitution gives only Congress the power to publicly declare war, can our system of government be said to — between the lines — give the President the power to wage secret war? The CIA's operations have come home in other ways also, in ways that are even more ominous than their domestic political surveillance project, Operation CHAOS. The Watergate burglars, for instance, were CIA people, and we still do not have a satisfactory explanation of just what they were trying to do. We also now have thousands of Cuban refugees that the CIA trained in terrorist techniques, such as blowing up Castro's sugar refineries; it should not be surprising that this training has apparently begun to be turned to international and domestic terror, such as blowing up airliners. By the same token, the intelligence agencies (KCIA, SAVAK, DINA) of foreign powers which allow the CIA to operate in their countries, expect to be allowed to operate in the United States.

And finally, votes which are cast for campaign positions which are merely cover stories make mockery of a republic based on the informed consent of the governed. With the list of our foreign policy failures



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generated in secrecy, H.R. 6051 concludes that we can no longer afford an ingrown decision-making process that values "toughness" and outdated myths more than reason and dispassionate analysis of reliable information.

In addition to the major change in the CIA mission, the Intelligence Control Act also puts forward some specific limitations on FIS authority. It specifically prohibits, for example, the use of organizations, colleges, businesses, the press, religious groups, or individuals in covert activities. The FIS would, however, carry out counterespionage abroad, as the FBCI would at home.

The Intelligence Control Act would also put an end to the claim that the intelligence budgets are exempt from the Constitution's requirement for a public accounting of expenditures. The present CIA has had no internal or external audits of its operations (too dangerous to the national security, they say). Instead of a clean reputation, the CIA has a seemingly endless series of allegations of questionable dealings in its proprietary companies and in the heroin trade, as well as some deceptive budgeting practices with DoD and NSA. The bill would require that the Office of Management and Budget submit a budget for the intelligence bureaucracy as a whole, as well as line-item budgets for each foreign intelligence agency. Such routine bookkeeping would be the beginning of accountability and making sure that the public is actually getting what it is paying for.

TOWARD A RATIONAL CLASSIFICATION SYSTEM

Even its defenders admit that the present secrecy system classifies far too much information, both as a matter of routine and in order to conceal controversial activities. Successive post-War Presidents have, by only the authority of Executive Orders, set up this system and made a few ineffective, face-saving gestures against massive overclassification. In essence, the presidency has given the agencies the right to keep secret any information which might, by some stretch of the imagination, damage the national security to any degree at all. No where does the presidential system suggest that the public's right to know should be weighed against possible "damage."

Title IV would inject some reality principle into the question. First, for all the fuss about leaks which have contributed to public debate, the executive has not been able to point to one that has actually damaged national security rather than embarrassed some government agency. There remains a consensus that certain kinds of information should not be leaked, and these are, in fact, the only kinds of secrets a classification system should protect.

H.R. 6051 would amend the Freedom of Information Act to provide a legislated, rather than executive, classification system which would end the legal pretext for cover-up and extend public debate. The new classification system would apply only to 1) the technical details of weaponry, 2) technical details of tactical military operations in time of declared war, and 3) defensive military contingency plans. In other words, specific *facts* about military defense would be secret, but information about the foreign policy decisions that the public is expected to support would not be. In addition, the new classification system includes a fail-safe mechanism — no information which "appears to relate to illegal or unconstitutional activity engaged in by any official of the Federal Government" could be properly classified.

Having a rational, limited, and manageable classification system would also improve the security of genuine secrets. When everything is classified, nothing is classified, and there is no effective protection for legitimate secrets. But by limiting the classification stamp to those few documents that actually *are* critical secrets, we would not be faced with the example of the government employee who carted home boxes full of classified documents that nobody missed.

BLOWING THE WHISTLE

Titles V and VI require and protect blowing the whistle on improper government activities. Title V deals with the question of "Official deceit," and it ends the plausible denial — the official lie — as an accepted means of manipulating public opinion. Under its provisions, if an official knowingly covers up an illegal intelligence activity, lies about it, obstructs an investigation of illegal conduct, or fails to report illegal activities, then that official would be guilty of a criminal offense.

Title VI approaches the problem from a somewhat different perspective — namely that officials who have in the past blown the whistle on their colleagues or their organizations have done serious damage to their careers. This has been true even in cases where the whistleblowing consisted of reporting to Congress — such as the case of Ernest Fitzgerald, who reported on the C-5 cost overrun. It took congressional action to ensure that blowing the whistle was not a luxury he paid for by losing his job.

Under the Intelligence Agency Control Act, where a whistleblower has been dismissed, demoted, transferred, reassigned, suspended or reprimanded, the burden of proof would be placed on the agency to show that these actions were not taken in retaliation for the whistleblowing. And under Title VI, such an official would be entitled to sue in court for reinstatement, for damages, and for the cost of enforcing his or her rights in court.

A SPECIAL PROSECUTOR

Currently, the Justice Department is the only means of prosecuting intelligence officials who have violated the law. And although we have at last gotten an indictment of an FBI agent (who apparently violated the law and Hoover's own 1966 prohibition on "black bag jobs") the fact is that this is a single example in the face of a long list of criminal activities. The Justice Department has instead explicitly declined to prosecute many instances of documented official crimes. It would seem that Watergate provides a lesson here — in prosecuting the White House officials it was necessary to take the investigation out of the President's Justice Department and give it to a Special Prosecutor who would have no real or apparent conflict of interest.

H.R. 6051 would set up the office of Temporary Special Prosecutor, lasting five years and with exclusive jurisdiction over violations of the law dealing with intelligence and counterintelligence. Past crimes would not of course be covered by the provisions of H.R. 6051, but there are unenforced laws already on the books — deprivation of civil or constitutional rights, illegal searches and seizures, unlawful surveillance, obstruction of justice, violation of the postal laws, the destruction of public records, perjury, false statements, and conspiracy to commit any and all of the above.

CONCLUSION

The situation in the post-war era has been that the intelligence agencies have been given great power and politely asked not to abuse it. Unless reforms are enacted that will actually limit that power and enforce the law, we will be allowing the same kinds of operations to spring up again once public interest wanes. And if there is a next time, we may not be so lucky as we have been in this round. We have no guarantee that next time the damage to the body politic would not be permanent. The time for a major overhaul is now. ■

Human Rights: A Domestic Agenda

BY ROBERT L. BOROSAGE

Free from the crimes and failures of past administrations, President Carter has used human rights as the gospel for a new-born American foreign policy. He has not hesitated to decry the shortcomings of others, to encourage them in the paths of redemption. But in politics as in ministry, hypocrisy is a common currency, a counterfeit coin which breeds suspicion and cynicism. The preacher must either reside above reproach, or keep moving to new territories. President Carter has indicated his intention to speak out repeatedly and frequently on human rights violations around the world. To do so requires that the administration take major steps to protect human rights at home. In his speech before the United Nations General Assembly, the President recognized the principle:

> We in the United States accept this responsibility [to foster human rights] in the fullest and most constructive sense. . . . I know perhaps as well as anyone that our ideals in the area of human rights have not always been attained in the United States . . . But the American people have an abiding commitment to the full realization of these ideals. We are determined therefore to deal with our deficiencies quickly and openly.[1]

The administration has yet to define a human rights agenda for the United States which will improve our own human rights record. Any number of items might comfortably nestle in a human rights program, ranging from the rights of Native Americans to self-determination to controlling corporate plunder abroad. The initial steps of a domestic human rights program may best be defined by the standards which we have held out for others. The Administration's own language suggests several areas of action.

Passage of International Covenants on Human Rights

Ironically, the United States has yet to ratify any of the major international covenants on human rights, including the International Covenants on Economic, Social Cultural Rights; on Civil and Political Rights; on the Elimination of All Forms of Racial Discrimination; and on the Prevention and Punishment of the Crime of Genocide. These documents codify the Universal Declaration of Human Rights, the generally accepted statement of rights recognized by the international community of nations.

In the late forties, the United States played a major part in steering the Universal Declaration to unanimous approval in the General Assembly. In this country, however, ratification of the covenants has foundered for years on the shoals of Southern opposition. The doyens of the Senate have combined with legal conservatives in the American Bar Association to block passage of any of the major covenants. The Southern senators acted on the general principle that federal meddling in states' rights was bad enough without involving international opinion. The legal conservatives opposed ratification because the treaties might infringe upon the domestic jurisdiction of the United States, and more to the point, might lead, in the words of ABA spokesman George Finch, to "socialism by treaty."[2] In the McCarthy period, opposition to the international covenants grew so hot, that Secretary of State Dulles informed the United Nations that the U.S. would not sign any of the international human rights covenants. Since that time, American spokesmen have been understandably hesitant to lecture others about their international human rights obligations.

Obviously the first item on any domestic human rights agenda is the passage of the major international covenants on human rights. President Carter has informed the United Nations General Assembly that he would bring each of these instruments before the Congress. His success or failure in gaining ratification will noticeably influence the tenor of his voice abroad. In addition, both the economic and the political covenants provide for reports to the U.N. on "the measures . . . adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights."[3] The administration's reports will no doubt receive close scrutiny in capitals throughout the world.

Shedding the Cold War Legacy

President Carter has made the Soviet Union a primary target for his comments on human rights. He should do so with care, for over the long years of the Cold War, we have come to mirror our adversary in many ways. Some of the worst excesses of the McCarthy period in this country have already been interred, but many still remain, and require a proper burial.

For example, President Carter has criticized the Soviet Union for its severe restrictions on free travel. The Helsinki Accords, signed by the U.S., the USSR, and thirty-three other countries, call for the participating states to

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"facilitate freer movement and contacts among persons of the participating states."[4] The Administration intends to focus on this issue in the discussion of the accords scheduled for this fall.

But American laws on immigration and trade are a complex web of political restraints and restrictions. For example, the McCarran-Walter Act of 1952 (8 U.S.C. 1701) defines categories of individuals who are ineligible to receive a tourist or immigrant visa to enter the United States. This list includes maniacs, beggars, prostitutes, drug addicts, people with communicable diseases — and anarchists and communists. In 1971, the Supreme Court upheld the government's right to deny a visa to the reputable Belgian marxist Ernst Mandel. In 1975, Dr. Giogio Napolitano, the principle economics advisor to the Italian Communist Party was denied a visa when he attempted to enter for a lecture tour. Last year, a former member of the British Communist Party received similar treatment. "I want to go to your wonderful country," George Marchais, the mayor of Marseilles and leader of the French Communist Party recently said, "But they will not let me do it because I am a dirty Communist."[5]

The apparent theory of the McCarran Act is that subversive ideas are communicable diseases, and must be quarantined from susceptible ears in this country, the bastion of free expression. It is a theory not unknown to the guardians of the Soviet people as well. Clearly the McCarran Act should be redrawn to provide strictly limited categories of persons who may be excluded from entry, primarily for contagious diseases, and not for contagious ideas. Political belief or association should have no basis in exclusion decisions.

Related to the McCarran Act is the Trading with the Enemy Act of 1917.[6] In its present form, the Act provides the President with virtually unlimited power to restrict economic exchanges between the U.S. and its "enemies." This latter category now includes Cuba, North Vietnam, and North Korea, in spite of the absence of any noticeable hostilities with those countries. Successive administrations have used the Act to regulate exchanges for political purposes, even requiring that citizens obtain a license to receive publications or films from the designated countries. Those who apply for licenses become, needless to say, prime suspects for FBI surveillance, a nice twist worthy of the KGB. The House Committee on International Relations is now considering proposals to amend the relevant sections of the Act. Again, the President's authority to impose controls on international trade for political purposes in peacetime should be eliminated.

The restrictions of the McCarran Act and the Trading with the Enemy Act are but two strands in a web of regulations which can be and are invoked to obstruct exchanges between U.S. citizens and those in officially "unapproved" countries, or with suspect political backgrounds. The entire range of travel restrictions should be reviewed prior to the fall meeting on the Helsinki Accords.

Another legacy of the Cold War are the many statutes restricting the activities of communists and subversives in this country. The scheduled reform of the federal criminal laws will enable the administration to support repeal of the "speech crimes," the various sedition acts passed over the years, which have already been eviscerated by the Supreme Court, and which serve primarily to provide the FBI with a statutory excuse for political spying.[7] FBI Director Clarence Kelley has variously admitted that the statutes were "designed for the Civil War era, not the Twentieth Century," and had been "reduced to a fragile shell by the Supreme Court." But neither development has prevented the Director from using the laws to justify FBI political investigations.[8] Legislation has already been introduced in the Congress for repeal of these laws as part of the process of rechartering the FBI. With administration support, these relics may be swept away with little trouble.

The Freedom of Political Expression

Of all of the rights guaranteed by the international conventions, President Carter has placed the greatest emphasis on the rights of free expression, of peaceful assembly and association, and of freedom from arbitrary interference with individual privacy. These are rights guaranteed also by the U.S. Constitution. They are areas where the administration feels that it can "speak from strength."

But formal legal protection offers no necessary guarantee against abuse. At best, legal guarantees are medicinal, useful only if applied, and they are applied only after the damage is done. The vicious tong which now rules Chile boasts a constitution with one of the best sets of constitutional guarantees in existence, and a savings clause which renders them all irrelevant. The Soviet Union also has extensive legal guarantees of rights which seem honored in the breach.

President Carter has expressed his concern for the fate of the courageous dissidents in the Soviet Union, the small number of intellectuals who challenge the regime and are harrassed, arrested, and sometimes expelled by it. The President should also show some concern for the citizens of another country which has historically used its police agencies to spy on and disrupt the activities of individuals labelled as "dissidents." That country is the United States.

The Senate Committee on the Intelligence Agencies detailed a small part of the abuses of the intelligence agencies in its seven-volume report last year. Domestic "dissidents" were the victims of informers, wiretaps, mail openings, cable interceptions, tax probes, provocations, entrapments, grand jury investigations, conspiracy indictments and massive surveillance by the FBI, the CIA, the National Security Agency, military intelligence, the IRS, the Justice Department and state and local police "intelligence" units.

As in the Soviet Union, the government went far beyond mere political voyeurism. The government planted informers to disrupt citizen groups. It aided vigilantes in attacks on innocent citizens. It ordered the burning of private property. It tried to foment riots and violence. It set citizens up for censure and sometimes cruel punishment by planting false information. It wrote anonymous and untrue letters to associates and employers to get citizens in trouble. It broke into homes and ransacked offices. It instituted tax audits and grand jury probes to distract and harass citizens engaged in political activity.

Freedom From Want

The U.N. Covenant on Economic, Social and Cultural Rights affirms the ideal of free human beings enjoying "freedom from fear and want." The covenant includes a series of rights to enforce that end. Article 7 recognizes "the right of everyone to the enjoyment of just and favorable conditions of work," with fair wages which guarantee a decent living, equal opportunity, and equal pay for equal work among men and women. Article 11 recognizes the right of "everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing. . . ." It also recognizes the "fundamental right of everyone to be free from hunger." Article 12 safeguards the right of everyone to the enjoyment of the "highest attainable standard of physical and mental health."[9]

These provisions are derived in great part from the objectives announced by Franklin Roosevelt on the eve of World War II. Roosevelt called for the protection of four essential human freedoms: the freedoms of speech, and of worship, and the freedom from want and from fear. To provide for the third, he detailed an Economic Bill of Rights, which he portrayed as a supplement to our political bill of rights. Roosevelt returned to his theme repeatedly during the war, making it the grand objective for the United States in the postwar years. Roosevelt's vision, and indeed, his language were implanted in the international conventions after the war.

But in the United States, the Roosevelt program was shattered by the Cold War. The human rights covenants of the U.N. were ignored, in no small part because of conservative fears of their "socialist" tone. The domestic economic bill of rights was abandoned for "prosperity" based on anti-communism and expansion abroad.

Yet in most nations of the world, particularly the developing nations, economic and social rights are given priority over political and civil guarantees. The irony of guaranteeing a free press to one who cannot read is apparent to all. It has become the American role to defend the importance of political civil rights against the general tendency of developing nations to slight them in the struggle for economic advancement. To play this role effectively, however, the Administration must first show its own sensitivity to the importance of economic rights both abroad and at home.

On April 29, Secretary of State Cyrus Vance struggled to define the Administration's human rights posture, and, for the first time, forwarded a formal definition of the rights which the Administration felt were encompassed in human rights guarantees. Vance included not only political and civil rights, but also "the right to the fulfillment of such vital needs as food, shelter, health care and education."[10] Vance's statement constitutes the first formal administration recognition of economic and social rights.

The Secretary admitted that fulfillment of these rights will depend on the "stage of a nation's economic development. . . ." For the United States, with the most advanced economy in the world, fulfillment of these rights must now become a first priority. These guarantees are also the next objective of the civil rights movement and the women's movement. With the expected passage of the Equal Rights Amendment in the next few years, *de jure* discrimination against minorities and women will be ended, but the stigma of generations of discrimination will still be felt. The guarantees of equal opportunity and equal treatment in fact can be enforced only by the firm guarantee of economic and social rights to all Americans.

The leading advocate of non-violence and racial equality was spied on, bugged and wiretapped, had his name slurred by vicious slanders, and had the government attempt bribery, extortion and finally a death threat to get him to end his political activities. But what Martin Luther King, Jr. experienced was mild compared to the government program run against Fred Hampton and the Black Panthers in Chicago. The Panthers were infiltrated, their programs were disrupted, their lives endangered by various attempts of the police to spark gang warfare. Hampton himself was finally killed in a hail of police bullets as he slept. The full extent of government responsibility for his death has not yet been finally established, but the evidence indicates that the FBI had decided to "get" Fred Hampton. And all of this took place not because he was considered violent — FBI memos dismiss that charge — but because the Bureau feared he was too popular and too charismatic, and that the Panthers might gain a large following in the slums of Chicago.

Only in the past few years have the outlines of illegal political spying and disruption been exposed. To this day, little significant change has taken place. No legislation has been passed to limit the activities of the intelligence agencies by law. The only "reforms" have been a series of executive or bureaucratic directives, which generally reaffirm the justifications used for political spying in the past and legitimate the unlawful for the future. Not surprisingly, the FBI still spies on citizens engaged in political activities. The CIA still runs secret checks on "potential" recruits. Grand juries are still used to harass political "dissidents." Local and state police departments continue to surveil political activity that should be protected by the First Amendment.

Those actively opposed to government policy can still find themselves the targets of government lawlessness. Feminist groups in New Haven, Connecticut and Lexington, Kentucky learned only last year about the use of the grand jury to imprison political activists without trial. Puerto Rican nationalists are being taught the same lesson this year in New York. Native Americans at Wounded Knee and elsewhere continue to be the targets of massive governmental disruption. La Raza Unida, a "dissident" political party in Texas and New Mexico, can detail the continuing ties between local, state and national police in political harassment.

If the Soviet Union is to be censured for its treatment of a thousand "dissident" intellectuals, then surely this country must be similarly judged — not on how it treats the placid majority, but on how it responds to the dissident few. If that is the proper measure of freedom, then the formal protections of the Bill of Rights have failed to cure the abuse of political and civil rights in this country.

What is needed is a strong dose of preventive medicine. Over the next two years, the Congress will legislate new charters for all of the federal intelligence agen-

cies. In addition, a campaign against local and state police spying will take place across the country. At a national level particular attention will be paid to LEAA, the Law Enforcement Assistance Administration, which played a major role in encouraging the growth of local police intelligence units. Legislation has already been introduced which would get the federal intelligence agencies out of the business of political spying, prohibit political informers, and ban wiretaps. It would also make officials personally responsible for violating the charter provisions of any intelligence agency. Increasing support now exists for the abolition of LEAA.

Thus far, the Carter Administration has not been heard on the various questions of intelligence agency and police reform. But if the President is to support the rights of dissidents abroad, then he must make certain that the government stops infringing the rights of citizens at home. The reform of the intelligence and police agencies will provide a primary test of the administration's determination to hold itself to high standards in the area of human rights.

President Carter can now return to the promise of Roosevelt more than thirty years after the fact. He will find, however, that its fulfillment will not be easy. Recent trends have moved this country further away from guaranteeing the fundamental economic rights so necessary to human freedom. Unemployment remains at over 7% of the work force, which means that some eight million people seek but cannot find work. This figure greatly underestimates the problem of guaranteeing employment at a fair remuneration to all who can work. A 1970 congressional estimate of employment in 51 central cities estimated that an average of 30.5% of the labor force was either unemployed, discouraged and no longer seeking work, or part-time employees who could not find full-time work.[11] In 1972, economists calculated that some 40% of the population was excluded from "useful paid employment at a decent living wage."[12] By 1975, some 26 million people lived below the officially defined poverty level.[13]

Needless to say, unemployment falls more heavily upon minorities and women. The unemployment rate among blacks is twice that of whites, and has remained the same since World War II. Both black and white women are unemployed at significantly higher rates than black or white men. The guarantee of useful work remains to be reached in this society.

In recent years, unemployment has been accompanied by severe inflation, a cruel tax on all those in lower income brackets or on fixed incomes. Moreover, basic necessities — food, housing, energy and health care — led the inflationary surge over the past five years.[14] The result is that adequate food, shelter, and health care are out of the reach of an increasing number of Americans. For example, when a lower-income family faces rising food costs, it finds it cannot "substitute down" to cheaper foods, and must reduce consumption. According to the Select Committee on Nutrition and Human Needs, an estimated 7.6 million people below the poverty level now suffer from malnutrition.[15]

In his first fireside chat, President Carter emphasized that

> Inflation has hit us hardest not in the luxuries but in the essentials — food, energy, health and housing. You see it every time you go shopping. . . . I understand that unemployment and inflation . . . have done great harm to many American families . . . ."[16]

The Administration may now establish the framework for economic and social rights in this country, for a guaranteed level of social justice which can stand as an example to others. Some of the pledges have already been made in piecemeal fashion. The Employment Act of 1946 recognized the value of a job for every able person (although it was explicitly changed from a *Full* Employment Act in the Congress). The Housing Act of 1949 recognized a national obligation to provide "a decent home and a suitable living environment for every American family. . . ." The Social Security Act of 1935 moved towards guaranteeing a minimal standard of living for every American. The Administration is pledged to pass universal health care legislation in the near future (although action on the legislation has been postponed for the present).

These fundamental objectives should be acknowledged as the basis of a domestic economic bill of rights. The President should seek to guarantee an enforceable right to work, to eat, to decent shelter, and to health care for all Americans. The administration can provide the framework by accepting this responsibility as part of its domestic agenda on human rights. ■

FOOTNOTES

1. *Washington Post*, 18 March 1977, p. 1.

2. Quoted in Van Dyke, *Human Rights, the United States and the World Community*, (1970).

3. Article 16, paragraph 1 of the International Covenant on Economic, Social, and Cultural Rights.

4. Helsinki Accords

5. Quoted by Rep. Robert Drinan, *Congressional Record*, 3/9/77, p. H1904.

6. Trading with the Enemy Act.

7. The speech crimes include The Riot Act, 18 U.S.C. § 2101; the Sedition Conspiracy Statute, 18 U.S.C. § 2384; the Smith Act, 18 U.S.C. § 2385; the Voorhis Act, 18 U.S.C. § 2386; the Peacetime Military Sedition Act, 18 U.S.C. § 2387; and the extension of the Wartime Military Sedition Act 18 U.S.C. § 2391.

8. Quoted in The Center for National Security Studies et al, *A Law to Control the FBI*, p. 7.

9. International Covenant on Economic, Social and Cultural Rights.

10. *Washington Post*, April 30, 1977, p. 2.

11. William Spring, et al, "Crisis of the Underemployed," *The New York Times Magazine*, November 5, 1972, pp. 42-60.

12. "Full Employment at Living Wages," Annals of the American Academic of Political and Social Science, March 1975, p. 104.

13. Lester C. Thurow, "Economic Progress of Minority Groups," *Challenge*, March-April, 1976.

14. Detailed in studies conducted by the Exploratory Project on Economic Alternatives.

15. *Nutrition and Health*, Senate Select Committee on Nutrition and Human Needs, Vol. II, 1976, p. 81.

16. Quoted in Bannon, Joan, *A Working Economy for Americans*, (1977), p. 26.

The Indictment of an FBI Man

This editorial is reprinted courtesy of the Chicago Tribune, *April 12, 1977.*

Agents for the Federal Bureau of Investigation in Washington and New York are reported to be very much upset because a New York grand jury has indicted a now retired FBI supervisor, John J. Kearney, on five counts of conspiracy, obstruction of correspondence, and illegal wiretapping. The alleged offenses are dated between 1970 and 1972, before Mr. Kearney retired.

What has the G-men upset is that this is the first time ever that an FBI agent has been indicted on felony counts. But Mr. Kearney is not the only FBI agent about whom there has been talk of illegal wiretapping etc. "A lot of us did some of these things in the past," one agent said. "A lot of us are saying, 'There but for the grace of God go I.' "

Another direct quotation from an agent is this: "Who's going to speak up for the agents? We've been getting kicked around by Congress and the press for two years now, and there's no one to defend us." FBI Director Clarence M. Kelley is not expected to retain office much longer and has not even a shadow of J. Edgar Hoover's former clout. And the Department of Justice has had lawyers working for the prosecution of Mr. Kearney.

Of course the best defense against any charges is demonstrable innocence. But many a veteran FBI agent lacks that defense. There are matter-of-fact reports that not many years ago illegal tactics by FBI agents were not only condoned by their superiors but positively encouraged — sometimes rewarded by cash bonuses.

In all this there is something even more offensive than any possible unfairness to Mr. Kearney, whom not even a zealous prosecutor could characterize as the person most responsible for whatever illegal tactics the FBI formerly employed. What is most offensive is that a federal law enforcement agency should repeatedly act illegally while enjoying total immunity from prosecution.

A country that has seen impeachment charges brought against a President and the conviction and sentencing to prison of an attorney general [John Mitchell] is not going to be horrified by the idea that FBI agents can be indicted if their conduct warrants it. So what if FBI agents are shook up? They need to be shook up enough to know that they are supposed to be law abiding themselves and that they are not immune to prosecution if they are not. ■

In The News

CIA/ACTIVITIES IN AUSTRALIA. According to Christopher Boyce, on trial in California for espionage, the CIA was secretly manipulating the Australian labor union leadership, infiltrating unions, and supressing strikes. The judge overruled government efforts to suppress mention of the Australian references. *(New York Times,* 4/28/77, p. 18)

CIA/AGENT RESIGNS IN PROTEST. Resigning after 12 years as a CIA operative, John Stockwell wrote an open letter to the new CIA Director, Stansfield Turner, explaining the reasons for his departure. The letter, printed in the *Washington Post,* gives numerous examples of waste and corruption within the CIA, and levels criticism at CIA's involvement in Angola. Stockwell disclosed, for instance, that the CIA purged the files of David Bufkin, an American involved in recruiting mercenaries for Angola, in anticipation of a Justice Department request for information concerning him. CIA Director Turner and the Senate Intelligence Committee have said they will investigate the specific charges raised in Stockwell's open letter. *(Washington Post,* 4/10/77; *Washington Post,* 4/13/77, p. 3)

CIA/BUDGET CONTROVERSY. According to sources close to the Senate Intelligence Committee, the Carter Administration has requested $6.2 billion for the 1978 budget for the nation's intelligence operations. The Senate Committee refused to deny or confirm the figure. *(New York Times,* 4/1/77, p. 1; *Washington Post,* 4/2/77, p. 2).

CIA/BUDGET: PUBLIC OR SECRET? CIA Director Stansfield Turner testified before the Senate Intelligence Committee that President Carter would not object to release of the overall cost of U.S. intelligence operations. While Turner said the administration believes publicizing the aggregate intelligence community budget would help restore public confidence, Sen. Hathaway argued it might hurt CIA's credibility. Morton Halperin of CNSS testified the following day that the budget figure for each of eight intelligence agencies should be made public: "the public is entitled to know and it could be revealed without revealing secrets." *(Washington Post,* 4/28/77, p. 15; *Washington Post* 4/29/77, p. 16)

CIA/ENERGY CRISIS. President Carter published the CIA estimates of the world oil situation in order to generate support for his new energy program. The CIA report predicted that the Soviet Union will be competing with the rest of the world for Middle East oil by the 1980s. *(Washington Post,* 4/19/77, p. 1; *New York Times,* 4/19/77, p. 24)

CIA/ENGLISH LANGUAGE PROPAGANDA. Rep. Don Edwards, (D-Ca.) has been informed by the CIA that it will end covert funding of English language books as part of its propaganda operations. Edwards learned of this change in policy because of his inquiries into a recent book critical of Salvador Allende, which had been commissioned in Britain by Forum World Features, reportedly a CIA subsidized propaganda operation. Prior to 1967, the Agency had secretly

In The News

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encouraged or underwritten the publications of more than 1,000 books, about 250 of which were in English. *(New York Times, 4/5/77, p. 34)*

CIA/PRESIDENT BLOCKS MICRONESIA REPORT. President Carter blocked the release of a Senate Intelligence Committee report on CIA's surveillance activities of Micronesia, a U.S. protectorate. Senator Inouye agreed to withhold the report, despite the Senate Committee's vote of 10-1 to release it. According to inside sources, at issue is the Senate committee's conclusion that the CIA had sources inside the Micronesian government and had penetrated the internal political process there. *(Washington Post, 4/30/77)*

CIA/RECRUITMENT OF MERCENARIES. *Newsday* reported that according to intelligence sources, the CIA is covertly supporting efforts to recruit hundreds of mercenaries in the U.S. and Great Britain to fight in Zaire. The CIA denies both that it is providing funds to recruit mercenaries and allegations that it is not cooperating with the Justice Department on an investigation of David Bufkin, who says he is a mercenary recruiter. *(Washington Post, 4/17/77, p. 16; Washington Post, 4/19/77, p. 12)*

FBI/COINTELPRO. The FBI had at least 62 informants in the Institute for Policy Studies in the course of its 6 year investigation of the Washington-based think tank. Thousands of dollars were spent by the government to obtain information about the Institute, most of which was available to the public at no charge. *(Washington Post, 4/21/77, p. A9)*

FBI/INDICTMENT OF AGENT. Former FBI supervisor John Kearney was indicted on April 7 by a federal grand jury in New York on charges of directing FBI agents in a secret mail opening and wiretapping operation during a search for Weather Underground fugitives from 1970-1972. Attorney General Griffin Bell commented: "My own dealings with the FBI in the short time that I have been Attorney General sustain my overall respect for the FBI and my sincere trust in the high standards of professional responsibility demonstrated by the men and women who have the honor of serving as FBI agents." (DoJustice Press Release, April 7, 1977; *Washington Post, 4/8/77, p. A1; New York Times, 4/8/77, p. 1)*

FBI/INDICTMENT OF AGENT, LEGAL FEES. In testimony before the Senate Appropriations Committee, Attorney General Griffin Bell said that any FBI agents indicted for illegal activities will "lose their life savings" defending themselves against the criminal charges, because the Justice Department has never paid for the defense of officials under criminal indictment. Bell also said that the Justice Department "desperately" needs a legislative charter for the FBI. *(Washington Post, 4/27/77, p. A7)*

FBI/PROTEST OF AGENT INDICTMENT. FBI Director Clarence Kelley asked Attorney General Bell to review the prosecution of FBI agents, citing the "seriously affected" morale at the Bureau. 300 FBI agents also expressed support for John Kearney, the retired FBI agent indicted recently, by rallying on the steps of a federal courthouse in New York City. *(Washington Post, 4/15/77, p. A1)*

FBI/INVESTIGATIONS OF AGENTS. The Justice Department has cleared John Malone, ex-head of the FBI's New York Field Office, of wrong-doing in "black bag jobs" between 1971 and 1973. *(Washington Post, 4/3/77, p. A3)*

FBI/INVESTIGATION OF WIRETAPS. Present and former agents of the FBI have been subpoenaed by the New Haven Police Commission as part of its investigation into alleged illegal wiretapping by the city's police between 1966 and 1971. *(New York Times, 4/22/77, p. 18)*

FBI/INFORMERS. According to files released to a Chicago woman under the Freedom of Information Act, a Welcome Wagon representative reported her family background to the FBI in 1970. *(Los Angeles Times, 4/3/77, part VII, p. 5)*

HOUSE ASSASSINATIONS COMMITTEE. D.C. Delegate Walter Fauntroy, a member of the House Assassinations Committee, has criticized the press for reporting that the Committee has produced little new information in its investigation. Fauntroy suggested that some journalists may be acting under the influence of the CIA. *(Washington Post, 4/24/77, p. A1)*

LEAA/UNDER REVIEW. A joint Justice/LEAA study group will examine the LEAA and make recommendations to Attorney General Griffin Bell concerning the agency's future. LEAA has continually been criticized for wasting money on poorly conceived and ineffective projects. *(Washington Post, 4/9/77, p. A1)*

LEGISLATION/INTELLIGENCE AGENCY REFORM. H.R. 6051 has been introduced by 17 members of the House of Representatives. It would prohibit political surveillance, restrict the FBI to criminal investigations, protect government "whistle blowers," and enact other prohibitions that would help to end government surveillance of lawful political activities. (See the article on page one of FIRST PRINCIPLES.) *(Washington Post, 4/6/77, p. A11)*

LEGISLATION/WIRETAPS. The Carter administration is expected to ask Congress for legislation requiring warrants for wiretaps in investigations of foreign intelligence activities in the U.S. The ACLU and other groups active in the fight against the Levi wiretap bill in the last Congress are afraid that this new bill may have some of the flaws of the earlier bill. *(Washington Post, 4/7/77, p. A12; New York Times, 4/21/77, p. 25)*

LETELIER ASSASSINATION/CIA CONNECTION. Edwin P. Wilson, former CIA operative and presently head of an arms export business, became the new focus of the Letelier investigation. Wilson is already under investigation for allegedly trying to recruit three Cubans last year to kill an opponent of Col. Muammar Qaddafi of Libya; the same Cubans arrived in Washington three days before Letelier was assassinated. In addition, Wilson was supposedly in contact with individuals within the CIA who had access to detonation devices and had a contract to sell the Libyan government "enough [timing pencils] to support terrorist activity for the rest of the century." Almost two weeks after this revelation, CIA Director Turner fired two middle-level CIA employees that had provided unauthorized assistance to Wilson and other former employees selling explosive devices and other material overseas. *(Washington Post, 4/12/77, p. 1; Washington Post, 4/27/77, p. 1)*

In The News

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LETELIER ASSASSINATION/ GRAND JURY. Jose Dionisio Suarez, an anti-Castro Cuban exile living in New Jersey, has been jailed for refusing to testify before a grand jury investigating the assassination of former Chilean Ambassador, Orlando Letelier. He and other members of the Cuban exile community state publicly they believe the grand jury is a "fishing expedition" into the Cuban groups, and are refusing to testify. In other developments in the case, Attorney General Bell has rejected a request by Letelier's widow, Isabel, that a special prosecutor be appointed to work on the investigation. *(Washington Post, 4/21/77, p. 1)*

MAIL OPENING. The U.S. Postal Service has proposed regulations that would prohibit interception or opening of mail by U.S. foreign intelligence agencies without a federal court warrant. *(Washington Post, 4/9/77, p. A3)*

PRIOR RESTRAINT. The Justice Dept. declined to vacate the injunction against former CIA official Victor Marchetti which limits his right to speak on CIA-related matters. However, in a separate action it lifted the injunction to permit Marchetti to testify in an espionage trial in Los Angeles. (Letter on file at CNSS; *Washington Post, 4/23/77, p. B6)*

In The Courts

FOIA/ATTORNEY FEES. *Cuneo v. Rumsfeld*, No. 75-2219 (D.C. Cir., Mar. 24, 1977), and *Nationwide Building Maintenance, Inc. v. Sampson*, No. 76-1453 (D.C. Cir., Apr. 18, 1977). In two opinions of Judge Tamm, the awarding of attorney fees is addressed for the first time by the Court of Appeals for the D.C. Circuit. The court held that for fees to be awarded, a final order is unnecessary. Where plaintiff's suit had a "causative effect" in the government decision to release requested documents, the requirement that plaintiff substantially prevail has been met and the court may at its discretion award fees.

FOIA/VAUGHN ORDER. *Waknin v. Dept. of Justice*, 76 Civ. 5407-CSH (S.D.N.Y., Mar. 22, 1977) (Memo opinion and order). In a Freedom of Information Act case for the FBI files on black intellectuals of the period 1914-1929, the court expressed doubt that the FOIA's exemption (b) (1) for national security information could apply: "It beggars credulity to believe that any documents sought by plaintiff, concerning black intellectuals of a long bygone era, could impinge upon our national defense or foreign policy." The court ordered the FBI to submit a Vaughn showing [detailed indexing and justification] for the withheld documents.

FOIA/VAUGHN ORDER. *Jaffe v. CIA*, Civ. No. 76-1394, (D.D.C., Memorandum Order, Apr. 7, 1977). Finding that "the untailored, boilerplate descriptions and justifications as well as the serious omissions and inconsistencies found in the affidavits render the government offerings insufficient," the Court ordered a detailed index and justification under *Vaughn* requiring specific detailed explanations of deletions broken down into segments of no more than 2 pages. Judge Parker ordered all segregable portions of the requested personal file of a reporter released even if "unintelligible."

SURVEILLANCE. *ACLU v. Finch*, 177-0047(C) (S.D.Miss., Feb. 18, 1977). The ACLU of Mississippi and other plaintiffs have filed suit against present and former officials of the Mississippi State Sovereignty Commission, the State Attorney General's Organized Crime Intelligence Unit, the Highway Patrol's Identification Bureau, and Mississippi Secretary of State charging that they illegally gathered and disseminated information on political activists and that the surveillance is still continuing. Judge Harold Cox has issued a temporary restraining order to prevent the State from destroying the files.

SURVEILLANCE. *African People's Party v. Martin*, 77-684 (E.D. Pa., Feb. 25, 1977) (Complaint). Alleging a series of unlawful entries into plaintiff's residence between Oct. 1975 and Feb. 1977 which were designed to intimidate, threaten, and coerce, the suit asks that the raids be declared illegal and that defendants (Philadelphia police officers and sheriffs and FBI agents) be enjoined from further raids.

SURVEILLANCE. *Driver v. Helms*, C.A. No. 75-224 (D.R.I., Apr. 1, 1977). In an ACLU suit (see FIRST PRINCIPLES, May, 1976) arising from the CIA mail opening program, the court in a lengthy opinion denied the defendant's motion to dismiss for lack of jurisdiction, improper venue and insufficiency of process. The motion to dismiss on behalf of the current FBI Director in his official capacity was also denied. The court granted plaintiff's motion to certify the class for purposes of declaratory and injunctive relief and certified for damages the class of persons whose mail was randomly opened. The court declined to certify as a class those whose mail was opened because they were on a watch list.

SURVEILLANCE. *Hampton v. Hanrahan*, No. 70 C 1384 (N.D. Ill., Order of Apr. 15, 1977). In the suit stemming from the police raid in which Black Panthers Fred Hampton and Mark Clark were killed (see FIRST PRINCIPLES, Nov. 1976), federal district court Judge Sam Perry dismissed charges against 21 present and former state and federal officials. He left in the suit only the seven police officers who fired into the apartment.

SURVEILLANCE. *Davidov v. Honeywell, Inc.* No. 4-77 Civ. 152 (D. Minn., Apr. 21, 1977) (Complaint). ACLU class action suit for damages and injunctive relief arising from a joint FBI/Honeywell effort to infiltrate and disrupt the anti-war "Honeywell Project" of the plaintiffs.

CASES REPORTED

Marks v. CIA, No. 75-1735 (D.D.C., Nov. 3, 1976), is now reported at 426 F. Supp. 708 (D.D.C. 1976).

New Documents

Available from the Center for National Security Studies Library

FBI DOCUMENTS ON WOMEN'S LIBERATION MOVEMENT.

Under the Freedom of Information Act, 1337 pages of FBI documents on the women's liberation movement from 1969 to 1973 have been released; they show extensive use of informants in both local and national women's groups around the country, including those working on abortion and equal rights legislation, and day care centers. Although there is no evidence in the files of violence or threat to national security, these were the justifications given for such investigations.

FBI COINTELPRO DOCUMENTS FROM SWP LAWSUIT

The Political Rights Defense Fund made available on Apr. 6, 1977 15,000 pages of files documenting FBI counterintelligence activity. Among other things, the documents show that the Bureau used dissension within the Catholic Church to try to force cancellation of an anti-war conference at Catholic University in Washington in 1971. The FBI also released documents showing that they conducted a COINTELPRO-type action in February 1972; in a sworn affidavit given in the SWP case, however, the FBI stated that no aspects of the SWP COINTELPRO were continued after April, 1971. *For copies, please contact PRDF, Box 649, Cooper Station, NY, NY 10003.*

In The Literature

Articles

Brouhaha in Brooklyn, by Diane Ravitch, *The New Republic*, March 12, 1977, p. 18. Brooklyn College political science professor Michael Seltzer's admitted contact with the CIA has skeptical collegues urging disciplinary action against him, and the author points to need for greater protection against the agency's infiltration into the academic community, while avoiding the charges of a McCarthyism of the left.

The FBI Takes Aim at AIM, by Elliot Kanter, *Seven Days*, April 11, 1977, p. 7. An account of a possible murder frame-up in California, and its connections with FBI infiltration and disruption of AIM.

How to Force the FBI and the CIA into Revealing What they Have On You, by Peter Biskind, *Mother Jones*, May 1977, p. 41. Useful article on what to expect from the bureaucracy when using the FOIA.

Intelligence Activities and the Rights of Americans, by Frederick A.O. Schwartz Jr., printed in *Christianity and Crisis*, and in *The Record of the Asso. of the Bar of the City of New York*, Vol. 32, No. 1/2, Jan./Feb. 1977. The Chief Counsel to the Church Committee on Intelligence Activities outlines the illegal and/or unethical activities of the intelligence agencies which were targeted at the law-abiding. He strongly urges that various prescriptions against agency abuses should be given in large doses.

Meet America's Meanest Dirty Trickster, by Roger Rapoport, in *Mother Jones*, April 1977, p. 19. The story of Darthard Perry, an informer and agent provocateur for the FBI in the Los Angeles black movement.

The New American Information Revolution, by James M. Naughton, *New York Times*, April 10, 1977, p. 4E. Discusses the tremendous success of the FOIA in loosening up the flow of information from government files and the obstructionist attitude of some agencies.

Outcasts of the Island, by Bernard D. Nossiter, *New York Review of Books*, April 14, 1977, p. 31. Discusses the deportations of Philip Agee and Mark Hosenball from Britain, and how Britain's security system and Official Secrets Act misfire.

Your Rights To Your Records, by Ann F. Harter and Stephen P. Harter, 1977, 25 pages. Procedures and aids for gaining access to and amending your personal records in government, school, and credit files. $3.00/copy, from S. Harter, Box 17222, Tampa, FL 33682. Rates for bulk orders.

Law Review Article

The Limits of Obsession: Fencing in the "National Security" Claim, Harlan Cleveland and Stuart Gerry Brown, 28 *Admin. L. Rev.* 327 (Summer 1976).

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Criminal Justice Information Control and the Protection of Privacy Act, Hearings Before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, 94th Cong., 1st Sess., on H.R. 8227, July 14, 17, and Sept. 5, 1975. Would protect the constitutional rights and privacy of individuals upon whom criminal justice information has been collected and control the collection and dissemination of such information.

FOI Case List, Jan. 1977 Edition, prepared by the FOI Committee of the Justice Department. May be obtained through Mr. Robert L. Saloschin, Chairman, FOI Committee, Room 5234, Department of Justice, Washington, D.C. 20530; or through the Subcommittee on Government Information and Civil Rights, B349C Rayburn House Office Building, Washington, DC 20515.

Foreign Intelligence Surveillance Act, Hearings Before the Subcommittee On Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives, 94th Cong., 2nd Sess., April 12, May 5, and June 2, 1976. A bill to amend Title 18, U.S. Code, which would restrict electronic surveillance of American citizens to cases where probable cause for criminal activity exists and limits executive discretion in "national security" wiretaps.

Provisions For A Special Prosecutor, Hearings Before the Subcommittee on Criminal Justice of the Committee of the Judiciary, House of Representatives, 94th Cong., 2d Sess. on numerous bills to provide for a Special Prosecutor, July 23, Aug. 26, and Sept. 1, 1976.

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Point Of View

(continued from page 16)

officials was that the decision to indict those FBI agents allegedly involved in burglaries, wiretaps, and mail openings in connection with the Weather Underground came after Attorney General Levi's decision not to indict any of those involved in the CIA mail opening program.

The White Paper justifying that decision to indict FBI but not CIA agents will not stand as the Justice Department's most sensitive showing of concern for the rights of citizens as they come into conflict with the government's perception of national security requirements. Nonetheless, the Paper does have one point: the was some ambiguity about the rights of the President to conduct intelligence operations designed to gather information about foreign governments. It is this that distinguishes the CIA mail opening program from the investigation of the Weather Underground. The latter was, pure and simple, a domestic criminal investigation and there has never been the slightest doubt about the requirement to follow the dictates of the Fourth Amendment in such investigations and that the FBI must secure a warrant before houses are entered, phones are tapped, or mail opened.

The indictment for the first time of an FBI official for activities connected with his official duties is an action of the greatest importance. While it goes without saying that the agent indicted and others that may follow must be presumed innocent until and unless they are found guilty by a jury, the very *act* must have stripped away from officials of the FBI and other intelligence agencies their sense of immunity, of being beyond the law, that has characterized their behavior. For that reason alone it is important to see this investigation through to the indictment and trial of all of those who, according to standard prosecutorial criteria, would normally be indicted.

Other programs now conceded to be illegal or unconstitutional raise somewhat different questions. There is, for example, a conflict between conducting criminal prosecutions and making information public so that those who were the subject of illegal surveillance and manipulation can be compensated in appropriate ways. Getting the full story out, doing something for the victims, and determining how to prevent future outrages seems to me to be more important than conducting criminal investigations unless the violations of the law were unambiguous and the responsibility clear.

The Attorney General should consider offering the FBI and other intelligence agencies a trade in relation to specific programs: the threat of prosecution would be removed in return for cooperation in getting out the facts and providing compensation from public funds for those who were damaged. The decision not to prosecute should not become, as it has in the case of the mail opening, a decision to defend the program. Rather, it should make it possible for the government to admit harm and compensate the victims.

First Principles
is published by the
Project on National
Security and Civil
Liberties, which is
sponsored by the
American Civil Liberties
Union Foundation and the
Center for National
Security Studies of the
Fund for peace.

122 Maryland Avenue, N.E., Washington, D.C. 20002
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Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad.
JAMES MADISON TO THOMAS JEFFERSON, MAY 13, 1798

Point of View

The FBI on Trial

MORTON H. HALPERIN

The fact that Attorney General Griffin Bell deserves high praise for resisting tremendous pressure not to indict FBI officials for allegedly carrying out operations in clear violation of the law tells us a good deal about the environment in which senior officials of the executive branch must operate. It emphasizes also the need to develop different procedures to deal with lawlessness by the intelligence agencies of the United States government.

It is obviously necessary that the Justice Department treat FBI agents as they treat other citizens and to recommend indictments to the grand jury when the evidence unambiguously suggests a violation of the criminal laws. This must be clear to Judge Bell and his associates; the arguments are presented concisely in the editorial from the *Chicago Tribune* reprinted in this issue of *First Principles*.

The hidden costs of the Attorney General's seeking indictment are not found in compromising an even-handed rule of law. Rather they are found in his need to work with officials of the FBI day in and day out on a range of matters. With the pending national security wiretap legislation, for example, Bureau agents and their friends on the Hill seek to undermine effective reforms. And with crimes of particular interest to the White House or the Justice Department, the FBI agents can choose to drag their feet.

When the Attorney General is told that "the morale of the Bureau will suffer" if FBI agents are indicted or forced to testify against each other, he must listen. The morale of an agency is a legitimate concern, but he also cannot ignore the implicit threat: "undermine my morale and I will undermine your favorite programs."

All of this suggests the need, argued many times before in this column, for a special prosecutor to monitor the intelligence agencies. Perhaps it is not too much to ask that, having now gone through this painful episode, Judge Bell and his senior associates will recognize that the special prosecutor proposal is not intended to cast any doubts on the integrity of the Justice Department. It is simply based on the organizational conflicts, which they too must now feel, in both doing their duty as prosecutors and needing to work with the FBI and other intelligence agencies.

The fact that the particularly rankled Bureau

(continued on page 15)

Typesetting by
Unicorn Graphics,
Silver Spring, Md.